

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)**

CAPITAL FUNDING, LLC)	
)	
)	
Plaintiff,)	
)	Civil Action No. CCB-18-0215
v.)	
)	
AVI “ZISHA” LIPSCHUTZ and)	
LARRY LIPSCHUTZ)	
)	
Defendants.)	
)	

**OMNIBUS SUPPLEMENTAL BRIEF REGARDING
DISMISSAL OF ZISHA LIPSCHUTZ**

Plaintiff Capital Funding, LLC (“Agent”), by and through its undersigned counsel, hereby submits this Omnibus Supplemental Brief addressing dismissal by settlement of defendant Avi “Zisha” Lipschutz (“Zisha”) on the currently pending matters in this action, which are:

- (i) Agent’s Motion for Summary Judgment filed on November 16, 2018 (ECF 34) (the “Summary Judgment Motion”);
- (ii) Larry Lipschutz’s Motion for Relief to File an Amended Answer to Complaint filed on October 25, 2018 (ECF 45) (“Amended Answer Motion”); and
- (iii) Agent’s Motion to Compel and for Sanctions filed on October 8, 2018 (ECF25) (“Motion to Compel” and together with the Summary Judgment Motion and the Amended Answer Motion, the “Motions”).

I. Zisha’s Dismissal Has No Effect on the Motions or Claims Against Larry.

The dismissal of Zisha from this action has no effect on the briefing before this Court on the Motions. Larry and Zisha jointly and severally guaranteed the loans at issue in this matter. Guaranty, § 1.1(a) (ECF 1-5). Agent is not required to enforce its rights against one guarantor to collect from the other. *Id.* at § 1.5.

Larry's incorporation of defenses raised by Zisha in his response to the Summary Judgment Motion is unaffected by Zisha's dismissal. Agent does not object to the Court's consideration of Larry's incorporation of Zisha's defenses. Those defenses are interchangeable between Larry and Zisha and are generalized; the incorporated defenses do not involve facts or circumstances specific to Zisha (or Larry). As detailed in the Summary Judgment Motion and reply in support thereof, the defenses are without merit. Moreover, since the briefing on Summary Judgment concluded, the sale related defenses have become moot as the proposed sale was terminated and the bankruptcy cases were dismissed. *In re 22 Maple Street, LLC, et al.*, Case No. 18-40816-nhl (Bankr. E.D.N.Y.) (ECF 134) (dismissing bankruptcy cases on January 28, 2019). The collateral was thereafter placed in a receivership overseen by the United States District Court for the District of Massachusetts ("Massachusetts Court"). *Capital Finance, LLC, et al. v. 22 Maple Street, LLC, et al.*, Case No. 18-10172 (D. Mass.) (ECF 78) (entering an order appointing a receiver on January 29, 2019). The independent third-party receiver appointed by the Massachusetts Court is now in control of the collateral. *Id.* While the receiver continues to market the collateral for sale, there is no currently pending sale agreement.

The only defendant-specific defense raised in this case was raised by Larry, who claims that he never saw the guaranty that he signed and therefore should not be bound by it. Larry raised this defense in another breach of guaranty action against him in the Supreme Court of New York. *AP MA Funding, LLC v. Avi "Zisha" Lipschutz and Larry Lipschutz*, Index No. 651570/2018 (Sup. Ct. N.Y., N.Y. Cty.). That case went to trial in September 2019. Justice Ostrager found Larry liable on the guaranty notwithstanding Larry's claims that he never saw the guaranty because Larry reaffirmed the guaranty in the forbearance agreement – just like in this case. See Trial Transcript excerpt attached hereto as Exhibit A at 76:25-77:14.

In sum, Zisha's dismissal from this case has no effect on the Motions or the claims against Larry. Larry remains fully liable on the guaranty in the amount of \$6,250,000, plus pre- and post-judgment interest, plus Agent's fees and costs. Agent respectfully requests that this Court rule in its favor on the Motions¹ and enter judgment against Larry.

Dated: October 31, 2019

Respectfully submitted,

BLANK ROME LLP

By: /s/ Paige B. Tinkham

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¹ If the Court rules in favor of Agent on the Summary Judgment Motion and enters judgment, Agent's request to compel discovery from Larry in the Motion to Compel is moot. However, its request for sanctions within the Motion to Compel will remain pending and Agent requests a ruling in its favor for sanctions.

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2019, true and correct copies of the foregoing were served by electronic filing on all counsel of record.

/s/ Paige B. Tinkham
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